

Message Text

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ORIGIN EB-08

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NSAE-00 USIA-06 OPIC-03 SP-02 TRSE-00 LAB-04
SIL-01 AGRE-00 OMB-01 STR-04 XMB-02 PA-01 PRS-01
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DRAFTED BY EB/IFD/ODF:RJSMITH:DA
APPROVED BY EB:JLKATZ
EUR/RPE:RGELBARD (SUBS.)
TREAS/IA:JAGRIFFIN (INFO)
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L:MFELDMAN
-----261927Z 128690 /45
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FM SECSTATE WASHDC
TO AMEMBASSY BRUSSELS IMMEDIATE
INFO ALL OECD CAPITALS

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E.O. 11652: N/A

TAGS: EINV, OECD

SUBJECT: BADGER CASE AND CONSULTATIONS ON THE OECD
GUIDELINES

REF: STATE 64594

1. WE ARE CONCERNED ABOUT THE ATTEMPT BY BELGIAN
OFFICIALS TO MAKE HIGHLY INAPPROPRIATE AND UNFORESEEN USE
OF THE CONSULTATION PROCEDURES UNDER THE OECD GUIDE-
LINES FOR FURTHERING THEIR ATTACK ON THE BADGER COMPANY AND
TO USE THE PRESS TO DISCREDIT BADGER. THESE ACTIONS COME
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AT A TIME WHEN AN EMPLOYEE'S SUIT IS UNDER CONSIDERATION IN
THE BELGIAN COURTS AND BADGER IS ACTIVELY PURSUING A SERIES
OF MEETINGS WITH EMPLOYEE REPRESENTATIVES AND GOB OFFICIALS
FOR THE PURPOSE OF REACHING A SATISFACTORY RESOLUTION OF
THIS ISSUE. IN THAT REGARD, WE HAVE BEEN INFORMED BY
GUSTAVE WUNDER, BADGER VICE PRESIDENT, THAT MEETINGS HAVE
BEEN SET UP IN BRUSSELS FOR APRIL 4 AND 5, WHICH WILL

INCLUDE TALKS WITH MINISTER EYSKENS.

2. IT IS CLEARLY IN THE MUTUAL INTEREST OF THE U.S. AND BELGIUM TO AVOID ACCUSATIONS IN THIS CASE WHILE WE AWAIT RESULTS OF CURRENT EFFORTS AMONG THE PARTIES, INCLUDING

THOSE IN THE BELGIAN COURTS, TO CLARIFY THE ISSUES AND REACH A SATISFACTORY RESOLUTION OF THE MATTER.

3. ACTION REQUESTED: IT IS REQUESTED THAT THE EMBASSY SEEK AN EARLY OPPORTUNITY TO MAKE KNOWN OUR CONCERNS TO MINISTER EYSKENS AND TO THE FOREIGN MINISTER IN ORDER THAT THEY CAN TAKE THEM INTO ACCOUNT IN CONNECTION WITH THE OECD CONSULTATIONS. OUR PRESENTATION SHOULD COVER THE FOLLOWING POINTS:

-- WE ARE CONCERNED THAT CONTINUING ACCUSATIONS IN THE PRESS WILL BE COUNTER-PRODUCTIVE WITH RESPECT TO CURRENT EFFORTS TO RESOLVE THE BADGER DISPUTE, WHICH INVOLVE THE BELGIAN COURTS, AS WELL AS DIRECT CONTACTS BETWEEN BADGER AND EMPLOYEE REPRESENTATIVES AND BELGIAN GOVERNMENT OFFICIALS. IN THAT REGARD, WE WERE PLEASED TO LEARN THAT BADGER OFFICIALS WILL BE MEETING WITH MINISTER EYSKENS NEXT WEEK.

-- WE BELIEVE ANY ATTEMPT TO GET THE OECD TO CONSIDER OR TAKE A POSITION ON THE MERITS OF THIS SPECIFIC DISPUTE WOULD BE MOST UNHELPFUL. FURTHER, IN OUR VIEW IT WOULD BE AN INAPPROPRIATE USE OF THE CONSULTATIVE PROCEDURES LIMITED OFFICIAL USE

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ENVISIONED UNDER THE OECD GUIDELINES.

-- HOWEVER, WE BELIEVE IT WOULD BE QUITE APPROPRIATE FOR THE OECD TO DEAL WITH GENERAL ISSUES WHICH GOVERNMENTS BELIEVE MAY HAVE BEEN RAISED BY THEIR EXPERIENCE IN PARTICULAR INSTANCES. FOR EXAMPLE, THE QUESTION OF WHAT IS THE RESPONSIBILITY OF HOME COUNTRY PARENT COMPANIES AS WELL AS DOMESTIC PARENT COMPANIES IN THE EVENT OF THE BANKRUPTCY OF A SUBSIDIARY COULD APPROPRIATELY BE ADDRESSED BY THE OECD'S COMMITTEE ON INVESTMENT AND MULTINATIONAL ENTERPRISES (CIME). THIS IN TURN RAISES THE QUESTION OF WHETHER AND, IF SO, UNDER WHAT CIRCUMSTANCES IT MIGHT BE APPROPRIATE TO PIERCE THE CORPORATE VEIL WITH REGARD BOTH TO MNE'S AND, SINCE THE GUIDELINES ARE NOT INTENDED TO INTRODUCE DISCRIMINATORY EXPECTATIONS, DOMESTIC FIRMS. THIS BROADER ISSUE MIGHT ALSO BENEFIT FROM FURTHER DISCUSSION IN THE CIME.

-- WE WANT THE GUIDELINES TO BE MEANINGFUL AND USEFUL IN

IMPROVING THE RELATIONSHIPS BETWEEN GOVERNMENTS AND MNE'S,
AND WE ARE INTERESTED IN YOUR VIEWS IN THE CONTEXT OF THE
CONSULTATIONS ON THESE KINDS OF ISSUES ON THE BASIS OF
EXPERIENCE IN BELGIUM.

-- WE DO NOT AGREE WITH CERTAIN INTERPRETATIONS YOU HAVE
PUT ON LANGUAGE IN THE GUIDELINES, BUT THIS AGAIN IS A

MATTER ON WHICH WE WILL HAVE AN OPPORTUNITY TO EXCHANGE
VIEWS IN THE COURSE OF THE CIME MEETING.

-- WITH REGARD TO THE BADGER CASE, AS YOU KNOW WE HAVE
BEEN TALKING WITH BADGER OFFICIALS IN AN EFFORT TO CLARIFY
THE ISSUES INVOLVED AND KEEP INFORMED OF THE EFFORTS
CURRENTLY UNDERWAY TO RESOLVE THE DISPUTE.

-- WE BELIEVE IT IS CLEARLY IN OUR MUTUAL INTEREST TO
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AVOID EXCHANGES OF ACCUSATIONS IN THE PRESS OR IN THE OECD
CONSULTATIONS WITH REGARD TO THE BADGER CASE. IN OUR
VIEW, IT WOULD BE PARTICULARLY UNFORTUNATE FOR THE OECD TO
BEGIN ITS CONSULTATIVE PROCESS UNDER THE GUIDELINES IN
SUCH AN ATMOSPHERE, WHICH WE BELIEVE WOULD NOT BODE WELL
FOR THE FUTURE USEFULNESS OF THIS MECHANISM.

-- BADGER'S INTEREST IN PURSUING PRESENT EFFORTS AMONG THE
PARTIES TO RESOLVE THIS DISPUTE IS UNDOUBTEDLY MOTIVATED
BY ITS DESIRE TO REPAIR TO THE EXTENT POSSIBLE THE
DAMAGE WHICH HAS BEEN DONE TO ITS REPUTATION. TO THE
EXTENT THE OECD CONSULTATION IS USED AS AN OCCASION FOR
ANOTHER ROUND OF ACCUSATIONS AGAINST BADGER, THE COMPANY
MAY WELL BE DISCOURAGED IN ITS EFFORTS TO FIND SOME AGREED
METHOD OF RESOLVING THIS DISPUTE ON THE BASIS THAT THE
ATTACKS ON ITS GOOD NAME ARE UNCONTROLLABLE.
CHRISTOPHER

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Sent Date: 26-Mar-1977 12:00:00 am
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Disposition Approved on Date:
Disposition Case Number: n/a
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